

Beyond the “rules of the game”

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I have long admired Francis Maupain’s work. His rigorous, precise, and yes, “persuasive” legal analysis of the relationship between multilateral trade and labour has served as a model for engaging linkage debates. I am therefore thrilled to have the opportunity, thanks to my colleague Brian Langille’s much appreciated initiative, to comment on Maupain’s (2013) book, *The future of the International Labour Organization in the global economy*. It is a life’s work, and is a testament to the creativity, depth and commitment of one of the main architects of the contemporary International Labour Organization (ILO).

The book is dense, in the best sense of the word. Consequently, in my contribution to this symposium, I will not even attempt an overview. Rather, I wish to engage with a familiar metaphor that recurs in the book: the “rules of the game”. The metaphor has permeated much of the timidly framed debate over the “social dimension of globalization”.¹ Maupain ably explains the metaphor’s genesis in what could easily be characterized as the World Trade Organization (WTO) vigorously batting the “ball” of trade–labour linkage back into the ILO’s court, expecting the ILO simply to drop the ball. For Maupain, despite the Organization’s initial hesitation, as it considered whether to hit or dribble the ball, there is one thing the ILO did not do: it refused to stop playing the game. Rather, the Organization sought to establish the rules of the game of a fair globalization...

I confess that I enter into this discussion of sport with some trepidation, as it has never been a big part of my reality – it might just be a gendered

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¹ See the World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All*, 2004, available at: <http://www.ilo.org/fairglobalization/report/lang--en/index.htm> [accessed 18 December 2014].

thing. However, it is a theme that is woven through Maupain's lucid book, and frames both his call for persuasiveness and the kind of interaction and experimentalist governance mechanisms he seeks for the ILO as the Organization enters its next century. In keeping with the theme, I will ask three questions.

As the mixed sports metaphors suggest, my first question is: What game are we really playing? The ILO is not another development aid agency. Rather, Maupain is concerned for the ILO to establish a legal framework that guides the exercise of growth through global economic interdependence, establishing a level playing field. He takes pains to distinguish the means of doing this from the functions of the ILO. With this move, he decentres international labour standards. Ultimately, his two key proposals for standard-setting stem very much from his concern for normative persuasion: an ILO Recommendation on policy coherence and an ILO Convention on social labelling.

Although he spends little time explaining why, the functions of the ILO are described as consisting of the "social dialogue" function – which is political, and requires universalism – and the function of "regulating" interdependence, which is economic, and is achieved through persuasion. Considering that the universalism challenge that gripped the ILO through the cold war has been won, Maupain focuses on persuasion. A robust defence of fundamental principles and rights at work as "enabling rights" flows through Maupain's broader work; they are the rules of the game, with which the ILO must find a way of ensuring universal compliance. But while a considerable part of the text is devoted to explaining the imperative of persuasion in a context in which the embedded liberalism bargain has broken down, I am left to wonder how much of current orthodoxy on growth has itself been taken to be "universalized" when Maupain talks of reconciling social progress with the constraints on open growth. The contours of that notion remain for the most part, in this text, assumed. However, unlike in 1919 or 1944, current global integration means that States face numerous obstacles to introducing national policies such as those underpinning the social-welfare-based systems of the industrialized countries of the North before decolonization. The obstacles require a response that is qualitatively different from a reciprocal *droit de regard* on Members' efforts to promote social progress. Maupain recognizes that we need to be committed to something more than the World Bank's atomized focus on reducing poverty. Yet it would take quite a leap of faith to assume that all institutions have as their goal, in this game, an equitable global order based on social justice and universal, lasting peace.²

Andrew Lang (2011) reminds us that in the post-war, pre-decolonization bargain, the trade regime could foster neoliberal free market policies in practice, "without formally imposing a particular vision of state–market relations" (p. 7) and indeed without even making it seem like there is any political con-

² The preamble to the ILO's Constitution states that "universal and lasting peace can be established only if it is based upon social justice". This notion is reaffirmed in the 1944 Annex to the Constitution, the Declaration of Philadelphia.

testation. He reminds us of the WTO's own legitimacy crisis, made palpable since Seattle, as a result of the unravelling of the embedded liberal compromise. One of the main reasons for this legitimacy crisis is the realization that the WTO, and the international financial institutions (IFIs), are far from neutral, but are deeply shaping the direction of the global economic order.

It is here that I feel an ambivalence in Maupain's work, which at once professes profound rethinkings, but also at times may be read to perpetuate the vision that globalization just needs to be softened around the edges, chiefly through the infusion of fundamental principles. This is seen when Maupain insists on the importance of the ILO engaging with the impact of fundamental rights – or core labour standards – on economic efficiency. ILO core labour standards, and their impact, were the object of a rather neat, sanitized study by the Organisation for Economic Co-operation and Development (OECD) on trade and labour standards, in which they passed muster in terms of their efficiency effects, since the OECD's focus was on productivity, not wages (OECD, 1996). Yet, as Maupain asks, what are we to make of the less neat and tidy joint report by the ILO and the WTO, which contained instead mixed conclusions about the impact of trade on employment and social progress, particularly in light of North–South dimensions? (WTO/ILO, 2007). Maupain acknowledges the need to come up with alternatives that take us beyond Keynesianism, even proposing that ILO in-house researchers should take the lead in finding them...

This brings me to my second question: Are we persuaded that everyone is really trying to play the game? Maupain sheds light on – and ultimately resists – such disillusion, with a remarkable quote from ILO Director-General Francis Blanchard, who dismisses the prospect of coherence with the Bretton Woods institutions and chastises the ILO for its complicity.

In an eclectic article, my late colleague Roderick Macdonald (Macdonald, 2011) invokes the 2000 initiative of the Marylebone Cricket Club (MCC), founded in 1787, consisting in the revision and restatement of the laws of cricket for the new millennium. The new version included a preamble to the laws, invoking the "Spirit of the Game" as embodied (inversely) by the injunction "that's not cricket". He contrasts this with legendary Trinidadian post-colonial scholar C.L.R. James' semi-autobiographical book on cricket (James, 1963), which underscores the ways in which the post-colonial "other" might follow all the rules but is the active, defiant embodiment of "that's not cricket". Macdonald reminds the reader that to know the rules, to clothe oneself in them and to act in conformity with them – and even to know the spirit of the rules – is not enough. He stresses that the problem is not even really about adapting the rules of the game to local context. Rather, "in the absence of an intention to organize conduct purposively to achieve an objective internal to the game, one is not 'playing the game'; one is simply playing *at* the game, or possibly playing *with* the game" (Macdonald, 2011, p. 314).

Maupain's account chronicles the extent to which the WTO and the IFIs seemed, at least initially, to want to get out of playing the game the ILO has been playing. He also skillfully illustrates the way in which they have been

forced to engage, in part by the ILO's refusal to accept premature defeat. Need I mention the shifts undertaken in the World Bank annual *Doing Business* reports to profess consistency with fundamental principles and rights at work?³ I have also interviewed decentralized World Bank officials in developing countries, who explained how the Bank avoids high-profile interactions that attract opposition or contestation, including from the ILO, such as direct involvement in massive labour code reforms; instead, targeted, specific reforms pushed through directly by the executive, and that have a profound impact on the labour market, are preferred. The wager appears to be that the ILO and its constituents are not privy – or are not paying attention – to low-visibility strategies to circumvent the game (Blackett, 2011).

Rather than seeking to “legitimize” fundamental principles and rights at work, I would suggest, along with Lang, that we – and I include the ILO – need to enter into deliberative discussions on a collectively defined, legitimating *purpose* of globalization. Like the MCC, the ILO is understandably seeking to assert normative hegemony over the rules of the game. However, maybe the ILO should be thinking a little more like post-colonial cricket players.

This leads me to the last question, which is both normative and concerned with “agency”: If this is a game, who should really be playing? Another way of asking this question might be: Who really matters in this game?

Maupain presciently notes that the ILO offers the only forum that brings together all the players in the real economy, as opposed to the players in the “virtual” or “financial” economy (Maupain, 2013, p. 114). Leaving aside whether the ILO needs to engage more with those who inhabit the new economy, I am more concerned to know whether the ILO really is engaging with those whose social location means they are not necessarily heard.

Maupain offers a resolutely institutional account, which amply recognizes the risk of the ILO's broadened mandate and potential membership inherent in “Decent Work for All”. I wonder, however, whether his account recognizes the potential for grounding the future of the ILO in a broadened understanding of social movements that force change, and that force the ILO's traditional tripartite constituency to include them. Not surprisingly, I am thinking about the remarkable invigoration that occurred for the ILO when social movements worked alongside the ILO's main constituents to bring about the historic Domestic Workers Convention, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201), both adopted symbolically at the 100th Session of the International Labour Conference.

I would wager that it is a reinvigorated, tripartite constituency – which understands and includes contemporary social movements – that will help the ILO past the narrow vision of protectionism that pervades much of the abstracted, atomized reasoning around trade–labour linkage in particular. I consider that this constituency can give the ILO the insight and the courage necessary to address the issues that are at the heart of accepting an open so-

³ The reports are available at: www.doingbusiness.org [accessed 6 January 2015].

ciety, by recognizing the rooted, pluralized yet global call for social justice. That call is not only in relation to “employment” but also to labour – paid and unpaid, productive and reproductive, informal and formal, migrant, gendered, racialized... The call is echoed by the myriad of workers who criss-cross deeply permeable, overlapping boundaries every day in search of a global “new deal”. I am persuaded that they are calling for international actors to: (1) take the lead in tackling one of the most compelling and widely agreed upon challenges, namely that of record-level income inequality, including between CEOs and their workers across global production chains; and (2) catalyse work on transnational baselines on wages, through a careful, experimentalist, reflexive approach, grounded in transnational social dialogue on a sectoral basis, even beginning with the atypical “Better Work” programme, based on preferential trade, flagged by Maupain and championed by the ILO with the International Finance Corporation (IFC) in the female-dominated textile industry in some of the poorest and most troubled countries in the world. I am thoroughly aware that this will bring back issues related to an already contested “ILO universalism”, which I would in any event be less inclined to defend in the abstract than in a manner that stresses deep indivisibility in the sense intended by the Charter of the United Nations. Everyone who matters to the game must be able to play seriously on the terms that matter; otherwise, we are just entertaining ourselves.

Ultimately I am not sure I want to be thinking about social justice as a game. The stakes for those who need social justice (all of us, really, but particularly the most marginalized groups) are simply too high – too high, that is, “if it is walled off from every other aspect of life and struggle” (S. James, 2013). C.L.R. James’ *Beyond a boundary* (1963) was part of a movement that included concerns about representation alongside recognition and redistribution (Fraser, 2009). I am inclined to want to think about social justice within a framework that is rooted in a substantive, or – as my colleague Colleen Sheppard puts it – “inclusive” equality (Sheppard, 2010). Yet social justice must reach beyond the boundary of the mere accommodation of labour in the transnationalized, post-colonial state (Coulthard, 2014). The future of the ILO lies in its ability to develop, from its margins, in Leah Vosko’s evocative words, an “alternative imaginary” (Vosko, 2010), enabling the creation of space. I celebrate the space that Maupain’s book opens up for social dialogue. It remains for us to really listen.

References

- Blackett, Adelle. 2011. “Beyond standard-setting: A study of ILO technical cooperation on regional labor law reform in West and Central Africa”, in *Comparative Labor Law and Policy Journal*, Vol. 32, No. 2, pp. 443–492.
- Coulthard, Glen Sean. 2014. *Red skin, white masks: Rejecting the colonial politics of recognition*. Minneapolis, MN, University of Minnesota Press.
- Fraser, Nancy. 2009. *Scales of justice: Reimagining political space in a globalizing world*. New York, NY, Columbia University Press.
- James, C.L.R. 1963. *Beyond a boundary*. Durham, NC, Duke University Press.

- James, Selma. 2013. "How 'Beyond a boundary' broke down the barriers of race, class and empire", in *The Guardian* (London), 2 April. Available at: <http://www.theguardian.com/commentisfree/2013/apr/02/beyond-a-boundary-broke-cricket-barriers> [accessed 8 Dec. 2014].
- Lang, Andrew. 2011. *World trade law after neoliberalism: Reimagining the global economic order*. Oxford, Oxford University Press.
- Macdonald, Roderick. 2011. "Custom made: For a non-chirographic critical legal pluralism", in *Canadian Journal of Law and Society*, Vol. 26, No. 2, pp. 301–327.
- Maupain, Francis. 2013. *The future of the International Labour Organization in the global economy*. Oxford, Hart Publishing.
- OECD. 1996. *Trade, employment and labour standards: A study of core workers' rights and international trade*. Paris.
- Sheppard, Colleen. 2010. *Inclusive equality: The relational dimensions of systemic discrimination in Canada*. Montreal and Kingston, McGill-Queen's University Press.
- Vosko, Leah F. 2010. *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford, Oxford University Press.
- WTO; ILO. 2007. *Trade and employment: Challenges for policy research*. A joint study of the International Labour Office and the Secretariat of the World Trade Organization. Geneva. Available at: http://www.wto.org/english/res_e/booksp_e/ilo_e.pdf [accessed 8 Dec. 2014].